THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.13251 of 2003

ORDER:

This writ petition is filed seeking Certiorari to call for the records pertaining to proceedings No. PP.II(1)1733/2003 dated 26.5.2003 issued by the first respondent and quash the same as illegal, arbitrary and without jurisdiction.

It appears, the petitioner is engaged in the business of Marketing of Insecticides manufactured by the licensed manufacturers and also carrying on its business. While so, the second respondent inspected the premises of the petitioner on 3.7.2002 and drew samples of a product "Monocrotophos 36% SL" of Batch No.080AP 59 (100 ml) packing manufacturing date 5/2002 and sent the same for testing at the State Pesticides Testing Laboratory for analysis, wherein it is alleged that the said product is not conforming to the standards and declared as 'misbranded'. Further, the second respondent vide proceedings dated 27.1.2003 issued a show cause notice to the petitioner under the provisions of the Insecticides Act, 1968 (for short 'the Act'). On receiving explanation from the petitioner dated 15.2.2003, and having not satisfied with the same, the second respondent passed impugned order dated 21.2.2003 cancelling the licence of the petitioner on the ground that the petitioner has conducted the business of misbranded pesticide by contravening the provisions of Section 3(k)(i) of the Act. Aggrieved by the same, petitioner filed appeal before the first respondent and the first respondent by order dated 26.5.2003 dismissed the appeal confirming the order passed by the second respondent. Aggrieved by the same, the present writ petition is filed.

In the impugned order dated 21.2.2003 it is categorically stated that the sample sent through the Additional Judicial First Class Magistrate, Kavali was also found 'misbranded' as per analytical report received from the Deputy Director of Agriculture, Faridabad, since the active ingredient contents percentage was only 32.27% as against the guaranteed 36%. Therefore, the petitioner has contravened Section 3(k)(i) of the Act. The first respondent-appellate authority after a detailed consideration of the

order passed by the second respondent, held that on the request of the dealer the referee sample was sent to Central Insecticides Lab, Faridabad for re-analysis. Based on the Central Insecticides Lab report, which was conclusive evidence, a show cause notice was issued to the petitioner and having not satisfied or convinced with the explanation offered by the petitioner, the second respondent has rightly came to the conclusion that the petitioner has violated the provisions of the Act, and dismissed the appeal.

Admittedly, the petitioner is neither an importer nor manufacturer or agent. The petitioner is carrying on the business of distributing insecticides, therefore, he requires to be satisfactorily discharged his burden as required under Section 30(3) of the Act, which reads as under:

> "A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves;
>
> (a) that he acquired the insecticide from an importer or a duly licensed manufacturer or dealer thereof;
>
> (b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and
>
> (c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it".

As per the above provision, the petitioner is supposed to prove that he has acquired the insecticide from an importer or a duly licensed manufacturer or dealer thereof. The petitioner admittedly has not placed any iota of evidence before the authorities to show that he has purchased the goods from a particular manufacturer, such as, invoices, receipts etc. Under the Act, the burden is on the petitioner to prove that he has purchased the same from the manufacturer or agent or distributor.

This Court also granted time to enable the learned counsel for petitioner to file any such proof that the petitioner has purchased the said goods from an importer or manufacturer, dealer or agent. The learned counsel for petitioner could not place any evidence before this Court. In

the absence of such evidence, I am of the opinion that the authorities below have not committed any error in coming to the conclusion that the petitioner has violated the provisions of Section 3(k)(i) of the Act and cancelling the licence of the petitioner. The writ petition is devoid of merits and liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

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C.V.RAMULU, J

Date: 18.9.2006

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THE HON'BLE SRI JUSTICE C.V.RAMULU

18.9.2006

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.13251 of 2003

Dated: 18th September, 2006

Between:

M/s Sri Sai Krishna Agencies,
represented by its Propreitor V.Sudhakar Rao.

.. Petitioner

and

Commissioner and Director of Agriculture,
A.P., Hyderabad & another.

.. Respondents